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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,239	02/10/2006	Dieter Hermeling	29827/41758	6113
4743	7590	07/09/2009	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP			PEPTONE, MICHAEL F	
233 SOUTH WACKER DRIVE				
6300 SEARS TOWER			ART UNIT	PAPER NUMBER
CHICAGO, IL 60606-6357			1796	
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			07/09/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Arguments***

***Priority***

The rejection of claims 1-4, 6-7, 9-11, and 14-19 based upon Popp *et al.* (WO 03/104301) {Popp *et al.* (US 2005/0165208) was used as the English translation of (WO 03/104301)} is maintained for reason of record and following response.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

In those cases where the applicant files the foreign papers for the purpose of overcoming the effective date of a reference, a translation is required if the foreign papers are not in the English language. When the examiner requires the filing of the papers, the translation should also be required at the same time. This translation must be filed together with a statement that the translation of the certified copy is accurate. When the necessary papers are filed to overcome the date of the reference, the examiner's action, if he or she determines that the applicant is not entitled to the priority date, is to repeat the rejection on the reference, stating the reasons why the applicant is not considered entitled to the date. If it is determined that the applicant is entitled to the date, the rejection is withdrawn in view of the priority date [see MPEP 201.15].

If the priority papers are already in the file when the examiner finds a reference with the intervening effective date, the examiner will study the papers, if they are in the English language, to determine if the applicant is entitled to their date. If the applicant is found to be entitled to the date, the reference is simply not used but may be cited to applicant on form PTO-892. If the applicant is found not entitled to the date, the unpatentable claims are rejected on the reference

with an explanation. If the papers are not in the English language and there is no translation, the examiner may reject the unpatentable claims and at the same time require an English translation for the purpose of determining the applicant's right to rely on the foreign filing date [see MPEP 201.15].

*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL PEPITONE whose telephone number is (571)270-3299. The examiner can normally be reached on M-F, 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MFP  
3-July-09

/Harold Y Pyon/  
Supervisory Patent Examiner, Art Unit  
1796

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